IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

Central Excise Appeal No. 40/2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's Orders

Mrs S.W. Deshpande, Advocate for appellant.

Coram : J.P. Devadhar and
B.P. Dharmadhikari, JJ.

Dated : 20th June 2007

1/ The Commissioner of Central Excise, Nagpur has filed this appeal under Section 35 G (1) of the Central Excise Act, 1944 stating that the following question of law arises out of the order of the CESTA Tribunal dated 3.12.2004 in Appeal No. E/2203/01-Mumbai:-

'In terms of sub-section (2) read

with sub-section (4) of Section 35E of the central Excise Act, 1944 whether an order passed by the reviewing authority under sub-section (2) of Section 35E directing an authorised officer other than an Adjudicating Authority to file an Appeal before the Commissioner (Appeals) and whether on subsequent direction the adjudicating officer who is of the same level can exercise the jurisdiction of filing an application under sub-section (4) of Section 35E of the Central Excise Act, 1944 ?"

2/ The learned counsel for revenue fairly states that the question raised in the appeal is answered by this Court against the revenue in the case of Commissioner of Central Excise v. Mundra Ply-wood Private Limited (CE Appeal No. 3 of 2004, decided on 23.4.2007).

3/ In this view of the matter, there is no merit in the appeal. It is accordingly dismissed with no order as to costs.

Judge. Judge.

hsj